

9 FAM 40.67 NOTES

(TL:VISA-342; 01-08-2002)

9 FAM 40.67 N1 BACKGROUND

(TL:VISA-314; 08-31-2001)

Pub. L. 104-208 (IIRIRA) added two new provisions which directly affect foreign students. The intent of this legislation was to prevent F-1 students from being educated at public expense. Section 346 makes aliens who violate the provisions of INA 214(l) inadmissible for five years. INA 214(l), added by section 625 of IIRIRA and amended to INA 214(m) by Pub. L. 106-386, prohibits an alien from obtaining student status to pursue a course of study at a:

- (1) Public elementary school or publicly-funded adult education program; and
- (2) Public secondary school, unless the:
 - (a) Aggregate period study at such school does not exceed 12 months, and
 - (b) Alien demonstrates reimbursement of the full, unsubsidized per capital cost of the education.

9 FAM 40.67 N2 APPLICABILITY

(TL:VISA-314; 08-31-2001)

The provisions of INA 212(a)(6)(G) affect only aliens applying for F-1 status after November 30, 1996, or aliens whose status was extended on or after that date. It does not apply to aliens attending public schools or programs while in other nonimmigrant status (e.g., F-2, E, H-4, J, or B-2—even out-of-status B-2).

9 FAM 40.67 N3 DEFINITIONS

9 FAM 40.67 N3.1 Defining "Elementary"

(TL:VISA-314; 08-31-2001)

For the purposes of INA 214(m), the term "elementary" means grades kindergarten through eighth.

9 FAM 40.67 N3.2 Defining "Secondary"

(TL:VISA-314; 08-31-2001)

For the purposes of INA 214(m), the term "secondary" means grades ninth through twelfth.

9 FAM 40.67 N3.3 Defining "Public"

(TL:VISA-191; 05-07-1999)

A public school is any school that receives more than half of its financing through state or local taxes or through Federal grants. The definition of "public" can encompass "alternative" or "charter" schools that allow parents to exercise extensive control over curriculum. It can also encompass the term "corporate charter school"—applied to schools that have received major grants and land, buildings, or educational materials from a corporation providing major employment opportunities in the local area, unless it can be established that the value of the grant on an ongoing annual basis exceeds the value of financing from public taxes and grants.

9 FAM 40.67 N3.4 Defining "Publicly-funded Adult Education"

(TL:VISA-314; 08-31-2001)

INS defines "publicly-funded adult education" as programs run tuition-free at or in conjunction with public secondary schools. It does not apply to schools such as community colleges that receive public funds but charge students tuition.

9 FAM 40.67 N4 PARTICIPATION IN LANGUAGE PROGRAMS

(TL:VISA-314; 08-31-2001)

The provisions of INA 214(m) prohibit an alien's participation in any publicly-funded language program.

9 FAM 40.67 N5 TRANSFERRING SCHOOLS

(TL:VISA-191; 05-07-1999)

An alien may transfer from public to private secondary school only if they reimburse the school as indicated in 9 FAM 40.67 N1 and do not exceed the one-year time limitation. Nonadherence to these requirements automatically voids the alien's visa and renders the alien subject to INA 212(a)(6)(G) as a student abuser.

9 FAM 40.67 N6 PENALTY FOR VIOLATION OF INA 214(M)

(TL:VISA-314; 08-31-2001)

- a. An alien who violates the provisions of INA 214(m) becomes excludable under INA 222(g) and must remain outside the United States for a continuous period of five years before qualifying for another nonimmigrant visa.
- b. An alien who transfers from private to public school has, under INA 101(a)(15)(F), violated his and/or her status unless the student has reimbursed the school as noted in 9 FAM 40.67 N1 above.

9 FAM 40.67 N7 DETERMINING WHETHER THE SCHOOL IS PUBLIC OR PRIVATE

(TL:VISA-191; 05-07-1999)

The responsibility for documenting whether the school meets the definition of "public" rests with the applicant. For example, a letter from a responsible official from the public school district could resolve doubts as to whether a "corporate charter school" is private.

9 FAM 40.67 N8 DETERMINING COMPLIANCE WITH FINANCIAL REIMBURSEMENT REQUIREMENT

(TL:VISA-314; 08-31-2001)

The school is responsible for determining what amount constitutes the "un-

subsidized per capita cost of education", the school's estimate of their per student expenditure of public revenues (federal, state and local). This figure is not necessarily the school's nonresident tuition. Consular officers shall not inquire into the calculation. However, officers should not accept estimates that are unrealistically low. In such cases, consular officers should request additional information from the school district. Consular officers should refer cases that appear to be deliberate attempts to circumvent the law to the Department (CA/VO/F/P).

9 FAM 40.67 N8.1 Evidence of Financial Reimbursement

(TL:VISA-342; 01-08-2002)

The public school authority must actually collect the student's reimbursement before a visa can be issued. The INS has instructed its ports of entry that, if the public school reimbursement is not entered on the student's Form I-20, *Certificate of Eligibility for Nonimmigrant Student Status*, with a notarized signature, the student must provide a notarized statement on school district letterhead. A school district official (usually the superintendent or someone designated by him or her) must sign the statement that reimbursement has been made. To avoid complications at the port of entry, visa applicants should provide the same evidence to qualify for an F-1 visa.

9 FAM 40.67 N8.2 Lack of Evidence of Financial Reimbursement

(TL:VISA-191; 05-07-1999)

The consular officer shall refuse an applicant who cannot present evidence of financial reimbursement under INA 221(g). The consular officer shall advise the applicant to arrange reimbursement directly with the school authority and return with proof of payment.

9 FAM 40.67 N9 TWELVE-MONTH LIMIT ON SCHOOL ATTENDANCE

(TL:VISA-314; 08-31-2001)

INA 214(m) places a 12-month limit on attendance at public secondary schools while in F-1 status. Attendance at a secondary public school, while in a status other than F-1, while in unlawful status, or prior to November 30, 1996, does not count against the 12-month limit. A consular officer may not

issue an F-1 visa if the proposed length of study would exceed the 12-month limit.